

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R9-8-102 | <u>Rulemaking Action</u>
Amend |
|--|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)
Implementing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-132(A)(13), 36-136(H)(4), 36-136(H)(5), and 36-136(H)(7)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 5390, November 30, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Will Humble, Office Chief |
| Address: | Arizona Department of Health Services
Office of Environmental Health
3815 North Black Canyon Highway
Phoenix, AZ 85015 |
| Telephone: | (602) 230-5941 |
| Fax: | (602) 230-5933 |
| or | |
| Name: | Kathleen Phillips, Rules Administrator |
| Address: | Arizona Department of Health Services
1740 W. Adams, Suite 102
Phoenix, Arizona 85007 |
| Telephone: | (602) 542-1264 |
| Fax: | (602) 364-1150 |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The proposed rulemaking amends R9-8-102 to exempt hospices, as defined in A.R.S. § 36-401, with 20 or fewer patients from compliance with 9 A.A.C. 8, Article 1. There are currently 40 hospices and 20 hospice inpatient facilities.

Arizona Administrative Register
Notices of Proposed Rulemaking

ties licensed by the Arizona Department of Health Services (Department). All of the current hospice inpatient facilities are designed to care for 20 or fewer patients. Only 10 of the current hospice inpatient facilities prepare and serve food and drink to hospice patients. Hospice patients in hospice inpatient facilities are terminally ill individuals receiving palliative care expressly for the purpose of pain management and comfort care. The majority of these hospice patients are on physician ordered diets that are limited, restricted, or therapeutic.

The Department believes that requiring hospices to comply with 9 A.A.C. 8, Article 1 would impose an unnecessary economic and regulatory burden on these small businesses.

- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
This rulemaking is exempt from the need for an economic, small business, and consumer impact summary under A.R.S. § 41-1055(D)(3).
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Not applicable
- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
Written comment on the proposed rulemaking may be submitted to an individual listed in paragraph 4 until 5:00 p.m., March 4, 2002, the date scheduled for the close of record.

The Department will schedule an oral proceeding on the proposed rulemaking if a written request for an oral proceeding is submitted to an individual named in paragraph 4 before 5:00 p.m., March 4, 2002.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
- 12. Incorporations by reference and their location in the rules:**
None
- 13. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION**

ARTICLE 1. FOOD AND DRINK

Section

R9-8-102. Applicability

This Article does not apply to the following:

1. Beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Milk and milk products;
3. Group homes, as defined in A.R.S. Title 36, Chapter 5.1, Article 1;
4. Child care group homes, as defined in A.R.S. Title 36, Chapter 7.1, Article 4;
5. Residential group care facilities, as defined in 6 A.A.C. 5, Article 74, that have 20 or fewer clients;
6. Assisted living homes, as defined in 9 A.A.C. 10, Article 7;
7. Adult day health care services, as defined in 9 A.A.C. 10, Article 7, that have 15 or fewer clients; ~~and~~
8. Behavioral health service agencies, licensed under 9 A.A.C. 20, that provide residential or partial care services for 10 or fewer clients; and

Arizona Administrative Register
Notices of Proposed Rulemaking

9. Hospice inpatient facilities, licensed under 9 A.A.C. 10, that have 20 or fewer patients.

NOTICE OF PROPOSED RULEMAKING

**TITLE 9. HEALTH SERVICES
CHAPTER 13. DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAMS SERVICES**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-13-1105 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- | | |
|-----------------------|---|
| Authorizing statutes: | A.R.S. §§ 36-136(F), 36B2202(A), and 36-2209(A) |
| Implementing statute: | A.R.S. §§ 41-1072 through 41-1079 and 36-2212 |
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 8 A.A.R. 267, January 11, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Judi Crume, Bureau Chief |
| Address: | Arizona Department of Health Services, Bureau of Emergency Medical Services
1651 East Morten, Suite 120
Phoenix, AZ 85020 |
| Telephone: | (602) 861-0708 |
| Fax: | (602) 861-9812 |
| or | |
| Name: | Kathleen Phillips, Rules Administrator |
| Address: | Arizona Department of Health Services
1740 W. Adams, Suite 102
Phoenix, Arizona 85007 |
| Telephone: | (602) 542-1264 |
| Fax: | (602) 364-1150 |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- The proposed rulemaking adds a Section to address the licensing time-frame requirements in A.R.S. §§ 41-1072 through 41-1079. R9-13-1105 is added to identify that time-frames for Department approval of an air ambulance registration certificate and an air ambulance registration certificate renewal are specified in 9 A.A.C. 25, Article 12.
- The rulemaking is necessary to ensure that time-frames for Department approvals required 9 A.A.C. 13, Articles 10 and 11 are consistent with the requirements in A.R.S. §§ 41-1072 through 41-1079.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
- Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
- Not applicable

Arizona Administrative Register
Notices of Proposed Rulemaking

8. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking ensures that Department approvals for air ambulance registration and re-registration are consistent with the requirements in A.R.S. §§ 41-1072 through 41-1079.

The rulemaking directly impacts 15 air ambulance services, the 70 registered air ambulances they operate in Arizona, and the Department. The rulemaking also indirectly impacts hundreds of emergency medical services patients annually served by air ambulances.

The overall economic impact of the rulemaking is expected to be minimal, with the benefits of the rulemaking outweighing the costs. There will be no new or additional costs to air ambulance services as a result of this rulemaking.

Cost Bearers

The new time-frames are consistent with the Department's current practices and may have only a minimal impact on air ambulance services and the Department. Should the Department fail to comply with licensing time-frames, the Department could be required to issue refunds and pay penalties as required by law. However, since the Department intends to comply with all time-frame requirements, it does not believe that this will occur.

Beneficiaries

The time-frames will benefit air ambulance services by providing clarity in the application and approval process and assuring that the Department will process all applications in a fair, consistent, and timely manner.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comment on the proposed rulemaking may be submitted to an individual listed in paragraph 4 until 5:00 p.m., March 4, 2002, the date scheduled for the close of record.

The Department will schedule an oral proceeding on the proposed rulemaking if a written request for an oral proceeding is submitted to an individual named in paragraph 4 before 5:00 p.m., March 4, 2002.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES

HEALTH PROGRAMS SERVICES

ARTICLE 11. AMBULANCE REGISTRATION CERTIFICATE

Section

R9-13-1105. ~~Repealed~~ Time-Frames for Department Approvals

ARTICLE 11. AMBULANCE REGISTRATION CERTIFICATE

R9-13-1105. ~~Repealed~~ Timeframes for Department Approvals

The Department shall approve or deny an application under this Article according to 9 A.A.C. 25, Article 12.

Arizona Administrative Register
Notices of Proposed Rulemaking

istration. The time-frames require the Department to provide written notice at certain stages of the application and approval process.

The rulemaking directly impacts over 11,000 currently certified emergency medical technicians, 15 air ambulance services, the 70 registered air ambulances they operate in Arizona, and the Department. The rulemaking also indirectly impacts thousands of emergency medical services patients annually served by these emergency medical technicians and air ambulances.

The overall economic impact of the rulemaking is expected to be minimal, with the benefits of the rulemaking outweighing the costs. There will be no new or additional costs to emergency medical technicians or to air ambulance services as a result of this rulemaking.

Cost Bearers

The new time-frames are consistent with the Department's current practices and may have only a minimal impact on emergency medical technicians, air ambulance services, and the Department. Should the Department fail to comply with licensing time-frames, the Department could be required to issue refunds and pay penalties as required by law. However, since the Department intends to comply with all timeframe requirements, it does not believe that this will occur.

Beneficiaries

The time-frames will benefit emergency medical technicians and air ambulance services by providing clarity in the application and approval process and assuring that the Department will process all applications in a fair, consistent, and timely manner.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comment on the proposed rulemaking may be submitted to an individual listed in paragraph 4 until 5:00 p.m., March 4, 2002, the date scheduled for the close of record.

The Department will schedule an oral proceeding on the proposed rulemaking if a written request for an oral proceeding is submitted to an individual named in paragraph 4 before 5:00 p.m., March 4, 2002.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES**

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

Section

R9-25-1201. Ground Ambulance Timeframes (A.R.S. §§ 41-1072 through 41-1079)

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

R9-25-1201. ~~Ground Ambulance~~ Time-frames (A.R.S. §§ 41-1072 through 41-1079)

A. No change

B. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. As part of the substantive review for approval of an initial or renewal certificate of registration, the Department or other Department-approved facility shall inspect the ~~ground~~ ambulance vehicle to be registered.
 2. No change
 3. If required under R9-25-502 or R9-25-602, the Department shall consider a request for an exception for good cause as part of the substantive review.
 - ~~3-4.~~ During the substantive review time-frame, the Department may make 1 comprehensive written request for additional documents or information or a supplemental request by mutual written agreement for additional information.
 - ~~4-5.~~ The time-frame for the Department to complete the substantive review and the overall time-frame are suspended from:
 - a. No change
 - b. No change
 - c. No change
 - ~~5-6.~~ The Department shall send a written notice of approval to an applicant who meets the qualifications in A.R.S. Title 36, Chapter 21.1 and this Chapter.
 - ~~6-7.~~ The Department shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 36, Chapter 21.1, and this Chapter.
- D. No change
- E. No change
- F. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Initial Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2204, 36-2232, 36-2233, 36-2240	185	30	155
Provision of ALS Services (R9-25-902)	A.R.S. §§ 36-2232, 36-2233, 36-2240	185	30	155
Transfer of a Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2236(A) and (B), 36-2240	185	30	155
Renewal of a Certificate of Necessity (R9-25-904)	A.R.S. §§ 36-2233, 36-2235, 36-2240	60	15	45
Amendment of a Certificate of Necessity (R9-25-905)	A.R.S. §§ 36-2232(A)(4), 36-2240	185	30	155
Initial Registration of a Ground Ambulance Vehicle (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	60	15	45
Renewal of a Ground Ambulance Vehicle Registration (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	60	15	45
Establishment of Initial General Public Rates (R9-25-1101)	A.R.S. §§ 36-2232, 36-2239	185	30	155
Adjustment of General Public Rates (R9-25-1102)	A.R.S. §§ 36-2234, 36-2239	185	30	155
Contract Rate or Range of Rates Less than General Public Rates (R9-25-1103)	A.R.S. §§ 36-2234, 36-2239	185	30	155
Ground Ambulance Service Contracts (R9-25-1104)	A.R.S. §§ 36-2232	90	30	60
Ground Ambulance Service Contracts with Political Subdivisions (R9-25-1104)	A.R.S. §§ 36-2232, 36-2234 (K)	30	15	15
Subscription Service Rate (R9-25-1105)	A.R.S. § 36-2232(A)(1)	185	30	155
<u>Basic Life Support Certification (R9-25-501)</u>	<u>A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6)</u>	<u>90</u>	<u>15</u>	<u>75</u>
<u>Basic Life Support Recertification (R9-25-510)</u>	<u>A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1), (4), and (6)</u>	<u>90</u>	<u>15</u>	<u>75</u>
<u>Extension to File a Recertification Application (R9-25-512 and R9-25-612)</u>	<u>A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1)</u>	<u>45</u>	<u>15</u>	<u>30</u>
<u>Advanced Life Support Certification (R9-25-601)</u>	<u>A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6)</u>	<u>90</u>	<u>15</u>	<u>75</u>

Arizona Administrative Register
Notices of Proposed Rulemaking

<u>Advanced Life Support Recertification (R9-25-610 and R9-25-611)</u>	<u>A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1), (4), and (6)</u>	<u>90</u>	<u>15</u>	<u>75</u>
<u>Air Ambulance Registration Certificate (R9-13-1101)</u>	<u>A.R.S. §§ 36-2212</u>	<u>60</u>	<u>15</u>	<u>45</u>
<u>Air Ambulance Registration Certificate Renewal (R9-13-1101)</u>	<u>A.R.S. §§ 36-2212</u>	<u>60</u>	<u>15</u>	<u>45</u>

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-801
R20-4-805
R20-4-806
R20-4-807
R20-4-808
R20-4-809
R20-4-810
R20-4-811
R20-4-812
R20-4-813
R20-4-814
R20-4-815
R20-4-816

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. §§ 6-861, 6-859(A), 6-863(A)(8), and 6-865

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening, 7 A.A.R. 3054, July 13, 2001

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock

Address: State Banking Department
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

5. An explanation of the rule, including the agency's reasons for initiating the rule:

These Sections govern the conduct of the business of bank trust departments and private trust companies in Arizona. They are being amended for several reasons. The first reason is to correct inadvertent drafting errors in the recent revision of Article 8.

One error is that parts of three of these Sections (R20-4-805, -806, and -807) are written so that they apply both to bank trust departments and to private trust companies. This is an error for one of two reasons. First, A.R.S. § 6-381 establishes that bank trust departments are not subject to the statutes implemented in Article 8 except in the administration of trust accounts. So, because Sections R20-4-805(B) and (C), and 807(A) do not regulate the administration of trust accounts, this rulemaking amends each subsection to remove the implication of their applicability to bank trust departments from the language of each one.

Second, in the case of R20-4-806(A), the Section's implied applicability to bank trust departments is an error because it is redundant. The Section grants trust departments and trust companies authority to use electronic record keeping. But, bank trust departments already have electronic record keeping authority by virtue of the recently revised text of R20-4-214 (A). To remove the redundancy, this rulemaking amends R20-4-806 (A) to remove implied references to bank trust departments.

The second underlying reason for these amendments is to revise some definitions peculiar to Article 8. The definitional effects of this rulemaking will be three. First, it removes the numbers from the definitions in R20-4-801. Second, it removes the definition of "Bank" in R20-4-801, recasting it as a definition of "Trust department." Third, it removes the definition of the term "Licensee" from article 8. This last change is made because neither bank trust departments nor private trust companies are, strictly speaking, "licensees." Neither one receives a license to conduct its business. Instead, trust departments operate under banking permits that grant trust powers to banks. And, trust companies operate under certificates granted by the Superintendent. For these reasons, the use of the term "licensee" is confusing and unnecessary.

The rationale for the amendments discussed in the preceding paragraphs, clarifying the distinction between trust companies and bank trust departments, is that the duties presently imposed by these Sections on bank trust departments are echoed in other provisions of state law. As a result, while it is fair to impose the duties on private trust companies, it is not necessary to restate duties imposed on banks by statute. Also A.R.S. § 6-381 establishes that bank trust departments are not subject to the statutes implemented in these Sections except in the administration of trust accounts. These amended Sections do not regulate the administration of trust accounts and do not, under state law, apply to bank trust departments.

Finally, the remaining Sections in Article 8 are amended to remove the confusing and unnecessary use of the term "licensee" from each Section.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

The department does not propose to rely on any study as an evaluator or justification for the proposed rule.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. The Banking Department

The amendment of these Sections will have a marginally beneficial effect on the department for three reasons. First, it will make the definitions in R20-4-801 easier to use. Second, it will remove the ambiguous term "licensee" from this Article. And finally, it will resolve any confusion caused by the previous revisions of R20-4-805, R20-4-806, and R20-4-807.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking, including detailed review of the rulemaking documents by GRRC staff.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any trust department's or trust company's cost of doing business in compliance with these rules.

Arizona Administrative Register
Notices of Proposed Rulemaking

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change State revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. The department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests to the department personnel listed in items 4 and 9. The department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item 9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the department schedules an oral proceeding.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 8. TRUST COMPANIES

Sections

R20-4-801.	Definitions
R20-4-805.	Reports
R20-4-806.	Records
R20-4-807.	Unsafe or Unsound Condition
R20-4-808.	Administration of Fiduciary Powers
R20-4-809.	Fiduciary Duties
R20-4-810.	Funds Awaiting Investment or Distribution
R20-4-811.	Investment of Funds Held as Fiduciary
R20-4-812.	Self-dealing Dealing
R20-4-813.	Custody of Investments
R20-4-814.	Compensation
R20-4-815.	Collective Investment

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In this Article, unless the context otherwise requires:

1. "Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company ~~or bank~~.
2. "Affiliate" has the meaning stated at A.R.S. § 6-801.
3. ~~"Bank" means a licensee under both A.R.S. § 6-201, et seq., and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business as defined at A.R.S. § 6-851.~~
4. "Certificate" has the meaning stated at A.R.S. § 6-851.
5. "Fiduciary" has the meaning stated at A.R.S. § 6-851.
6. "Governing instrument" means a document, and all its operative amendments, that:
 - a. ~~Creates a trust and regulates the trustee's conduct;~~
 - b. ~~Creates an agency relationship between a~~ trust department or trust company licensee ~~and a client;~~ or
 - e. ~~Otherwise evidences a fiduciary relationship between a~~ trust department or trust company licensee ~~and a client.~~
7. "Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.
8. ~~"Licensee" means a bank, as defined in this Section, and a trust company, as defined in this Section.~~
9. "Person" has the meaning stated at A.R.S. § 1-215.
10. "Superintendent" has the meaning stated at A.R.S. § 6-851.
11. "Trust asset" means any property or property right held by a trust department or trust company licensee for the benefit of another.
12. "Trust business" has the meaning stated at A.R.S. § 6-851.
13. "Trust company" has the meaning stated at A.R.S. § 6-851.
- "Trust department" means a permittee under both A.R.S. § 6-201 et seq., and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.
14. "Trust funds" means any money held by a trust department or trust company ~~licensee~~ for the benefit of another.
15. "Trustor" means a person who creates or funds a trust, or both.

R20-4-805. Reports

- A. Within 90 days following each December 31st, each trust department and trust company licensee shall file an annual report of trust assets with the Superintendent on the form prescribed by the Superintendent. The annual report shall include the current market value of all trust assets held by the trust department or trust company licensee as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by R20-4-812(E) through R20-4-812(G).
- B. Each trust company licensee shall deliver a copy of ~~its each~~ annual report and certificate of disclosure to the Superintendent within ~~ten~~ 10 days of filing ~~the each~~ report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Superintendent, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.
- C. Each trust company licensee shall notify the Superintendent of any change in the directors or officers of the company within 10 days of the change. Any trust company licensee with more than 25 officers may, after obtaining the Superintendent's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's licensee's corporate operations or in the trust company's licensee's trust business in this state.

R20-4-806. Records

- A. A trust company licensee may use a computer recordkeeping system if the trust company licensee gives the Superintendent advanced written notice that it intends to do so. Except for records required by subsections (B)(1)(a) ~~and~~ ~~or~~ (B)(1)(b), the Department shall not require a trust company licensee to keep a written copy of its records if the trust company licensee can generate all information required by this Section in a timely manner for examination or other purposes. A trust company licensee may add, delete, modify, or customize a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a trust company licensee shall report to the

Arizona Administrative Register
Notices of Proposed Rulemaking

Superintendent any alteration in the ~~approved~~ computer recordkeeping system's fundamental character, medium, or function if the alteration changes the computer system to a paper-based system.

- B. ~~A~~ All trust department or trust company licensee shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company licensee, including the following:
1. A file for each account that includes:
 - a. The original of the governing instrument,
 - b. The originals of all contracts and other legal documents,
 - c. Copies of all correspondence,
 - d. Accounting records disclosing all the financial transactions, and
 - e. A listing of all the account's assets and liabilities.
 2. An investment file for each account that includes:
 - a. All original documentary evidence of the account's assets;~~;~~ or
 - b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
 - c. A record of the initial and annual investment reviews for the account.
 3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company licensee for itself, distinguishing them from those relating to the trust department's or trust company's licensee's trust business;
 4. Unaudited financial statements. ~~A~~ Each trust department or trust company licensee shall produce these statements quarterly or more frequently when directed by the Superintendent. The financial statements shall include at least:
 - a. A balance sheet;~~;~~ and
 - b. A statement of income, expenses, and retained earnings.
 5. Adequate records of all pending litigation that names the trust department or trust company licensee as a party.
- C. ~~A~~ Every trust department licensee shall keep its fiduciary records separate and distinct from the trust department's licensee's corporate records.
- D. A trust department or trust company licensee shall keep records described above in subsections (B)(1) and (B)(2) for at least 3 years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company licensee shall keep that account's records, described above in subsections (B)(1) and (B)(2), for three ~~3~~ years after the litigation is finally resolved.

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company licensee conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Superintendent determines constitutes an unsafe or unsound business practice jeopardizing the trust company's licensee's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's licensee's principal.

R20-4-808. Administration of Fiduciary Powers

- A. The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company licensee. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's licensee's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.
- B. A trust department or trust company licensee shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company licensee shall keep a written record of each new account approval and of the closing of each account. ~~The~~ A trust department or trust company licensee shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's licensee's board shall ensure that an annual review of account assets is conducted for any account in which the trust department or trust company licensee has investment responsibility, to determine whether to retain or dispose of the assets.

Arizona Administrative Register
Notices of Proposed Rulemaking

- C. A trust department or trust company licensee exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona ~~to, who shall~~ advise and inform the trust department or trust company licensee on fiduciary matters and all other legal issues presented to the trust department or trust company licensee by the conduct of its trust business.

R20-4-809. Fiduciary Duties

- A.** ~~All~~ trust department or trust company licensees shall perform all fiduciary duties imposed upon ~~it them~~ by law, including the following:
1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
 2. Use reasonable care and skill to make the account productive;
 3. Provide complete and accurate information of the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
 - a. The trust department or trust company licensee and its account's beneficiary, principal, or authorized person agree otherwise in writing;
 - b. The governing instrument provides otherwise; or
 - c. A different frequency ~~is was~~ established by a lawful course of dealing before the effective date of this rule; and
 4. Comply with all lawful provisions of the governing instrument.

R20-4-810. Funds Awaiting Investment or Distribution

- A.** Trust funds held by a trust department or trust company licensee awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.
- B.** A trust department or trust company licensee may keep trust funds in deposit accounts maintained by the trust department or trust company licensee, unless prohibited by law or by the governing instrument. The trust department or trust company licensee shall set aside collateral security for all deposited trust funds under a third party's ~~3rd party's~~ control. The collateral shall be the following ~~types~~ type of securities, in any combination:
1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
 2. Any other obligations fully guaranteed by the United States government as to principal and interest;
 3. Obligations of a Federal Reserve Bank;
 4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
 5. Readily marketable securities that either:
 - a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
 - b. Satisfy state pledging requirements under A.R.S. § 6-245(C).
- C.** The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

R20-4-811. Investment of Trust Funds

- A.** A trust department or trust company licensee shall invest trust funds according to:
1. The governing instrument; and
 2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7601 through 14-7611.
- B.** A trust department or trust company licensee shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

R20-4-812. Self-dealing ~~Dealing~~

- A.** A trust department or trust company licensee shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its own securities;
 2. Other types of property acquired from the trust department or trust company licensee;
 3. Property acquired from the trust department's or trust company's licensee's directors, officers, or employees;
 4. Property acquired from the trust department's or trust company's licensee's affiliates;
 5. Property acquired from its affiliates' directors, officers, or employees; or
 6. Property acquired from other individuals or organizations with an interest in the trust department or trust company licensee if that interest might affect the trust department's or trust company's licensee's exercise of discretion to the detriment of its trust clients.
- B.** ~~A However, the~~ trust department or trust company licensee may use trust funds to purchase its own securities, or its affiliates' securities:
1. If the trust department or trust company licensee has authority under subsection (A),~~;~~ and

Arizona Administrative Register
Notices of Proposed Rulemaking

2. If those securities are offered pro rata to all stockholders of the trust department or trust company licensee.
- C. A trust department or trust company licensee shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
 1. Its directors, officers, or employees;
 2. Its affiliates;
 3. Its affiliates' directors, officers, or employees; or
 4. Other individuals or organizations with an interest in the trust department or trust company licensee if that interest might affect the trust department's or trust company's licensee's exercise of discretion to the detriment of its trust clients.
- D. However, a trust department or trust company licensee may sell or loan trust property to persons prohibited by subsection (C) if either:
 1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company licensee has incurred a contingent or potential liability for breach of fiduciary duty; and
 - a. The proposed sale or loan avoids the contingent or potential liability;
 - b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's licensee's minutes;
 - c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
 - d. The affected account is reimbursed, in cash, at no loss to that account; or
 2. The Superintendent requires or approves, in writing, the sale or loan to otherwise prohibited parties.
- E. A trust department or trust company licensee may sell trust property held in one + account to another of its accounts if:
 1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- F. A trust department or trust company licensee may loan trust property held in one + account to another of its accounts if:
 1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- G. A trust department or trust company licensee may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
 1. The transaction is fair to the borrowing account; and
 2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

R20-4-813. Custody of Investments

- A. A trust department or trust company licensee shall keep each account's investments separate from its own assets. It shall place each account's assets in the joint control of at least two 2 officers or employees of the trust department or trust company licensee designated in writing for that purpose by:
 1. The trust department's or trust company's licensee's board of directors, or
 2. One or more officers authorized by the trust department's or trust company's licensee's board of directors to make the designation.
- B. A ~~The~~ trust department or trust company licensee shall either:
 1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
 2. Adequately identify each account's property in the trust department's or trust company's licensee's records.

R20-4-814. Compensation

- A. A trust department or trust company licensee acting as a fiduciary may charge a reasonable fee for its services. It shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.
- B. A ~~No~~ trust department or trust company licensee shall ~~not~~ permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company licensee in the administration of an account.

R20-4-815. Collective Investments

- A. All collective investments made by a trust department or trust company licensees shall be in a common trust fund established under A.R.S. § 6-871, and maintained by the trust department or trust company licensee exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company licensee acting as a fiduciary. A trust department or trust company licensee shall not establish a common trust fund unless it first:
 1. Prepares a written plan regarding the common trust fund; and
 2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.
- B. The plan shall describe the common trust fund's operational details, including a description of:
 1. The trust department's or trust company's licensee's investment powers and investment policy over all funds deposited in the common trust fund,;
 2. The manner for allocating the common trust fund's income and losses,;

3. The criteria for admission to or withdrawal from participating in the common trust fund; and
 4. The method for valuing assets in the common trust fund and the frequency of valuation.
- C. A trust department or trust company licensee shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B) ~~(A)~~, and shall provide a copy of the plan upon request.
- D. The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company licensee.

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

- A. Any trust department bank that wants to surrender its trust powers shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust department bank has no remaining fiduciary duties, the Superintendent shall notify the trust department bank that it no longer has authority to exercise trust powers.
- B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Superintendent shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.
- C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Superintendent's supervision shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust company has no further fiduciary duties, the Superintendent shall notify the trust company that it no longer has authority to exercise fiduciary powers.
- D. Any trust department or trust company licensee that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company licensee or its stockholders, directors, or officers.